

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

	)	1:05-cv-00276 OWW
BALJIT KAUR, HARNOOR KAUR,	)	
GURKIRAT SINGH, and THE ESTATE	)	MEMORANDUM DECISION AND
OF KHEM SINGH,	)	ORDER RE DEFENDANTS'
	)	MOTIONS TO DISMISS PURSUANT
Plaintiffs,	)	TO FED. R. CIV. P. 12(B)(6)
	)	(Docs. 39, 48)
v.	)	
	)	
ED ALAMEIDA, JR., et al.,	)	
	)	
	)	
Defendants.	)	
	)	
	)	

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I. INTRODUCTION

All defendants move to dismiss the complaint of plaintiffs BALJIT KAUR, HARNOOR KAUR, GURKIRAT SINGH, and THE ESTATE OF KHEM SINGH ("plaintiffs") pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendant RONALD ROSTON, M.D., filed a separate motion to dismiss (Doc. 39) and the remaining defendants filed a joint motion to dismiss (Doc. 48).



Fourteenth Amendment Right to "Family Relations";

(9) Violation of United States Treaty (International Covenant on Civil and Political Rights); Violation of Fifth and Eighth Amendments (Cruel and Unusual Punishment); Violation of United States Treaty (International Convention on the Elimination of all Forms of Racial Discrimination);

(10) Violation of Cal. Govt. Code § 845.6 (Failure to Summon Medical Care); and

(11) Violation of Cal. Welf. & Inst. Code § 15600, *et seq.* (Elder Abuse).

Dr. ROSTON moved to dismiss the complaint on May 20, 2005. (Doc. 39, Roston Mem.) The remaining defendants moved to dismiss the complaint on July 22, 2005. (Doc. 48, Defs.' Mem.) The parties stipulated to move the date for oral argument on both motions to September 12, 2005. (Doc. 53, Stipulation, filed July 29, 2005; Doc. 55, Order, filed August 5, 2005).

On July 27, 2005, plaintiffs filed opposition to Dr. ROSTON's motion to dismiss. (Doc. 49, Pls.' Opp. to Roston) On August 26, 2005, plaintiffs filed opposition to the remaining defendants' motion to dismiss. (Doc. 59, Pls.' Opp. to Defs.) Dr. ROSTON filed a reply to plaintiffs' opposition on August 30, 2005. (Doc. 64, Roston Reply) The remaining defendants filed a reply on September 6, 2005. (Doc. 67, Defs.' Reply)

Oral argument was heard on September 12, 2005. Carolyn D. Phillips, Esq., Catherine Campbell, Esq., and Robert Navarro, Esq., appeared on behalf of plaintiffs, with Mr. Daniels, Esq., specially appearing. Alvin Gittisriboongul, Esq., appeared on behalf of all defendants except Dr. Ronald Roston. Susan M. Steward, Esq., appeared on behalf of Dr. Roston.

1                                    **III.     SUMMARY OF PLEADINGS**

2  
3            **A.     Parties.**

4            Khem Singh ("Mr. Singh") was a state prisoner at SATF from  
5 October 15, 2001 until his death on February 16, 2004. Mr. Singh  
6 was convicted of child molestation (Cal. Penal Code § 288, lewd  
7 or lascivious acts with a child under age 14) and was sentenced  
8 to fifteen years to life with possibility of parole.

9            Mr. Singh was born March 30, 1931, in Punjab Province,  
10 India. He was a life-long practicing Sikh and a priest in the  
11 Sikh religion. Mr. Singh's religious practices prohibited him  
12 from eating meat, eggs, or food that was on the same plate as  
13 meat. Mr. Singh's religious practices also included wearing a  
14 beard and turban and never cutting his hair. Mr. Singh's only  
15 language was Punjabi and he did not speak, read, or write  
16 English. (AC ¶¶ 26, 28)

17            At SATF, Mr. Singh was housed in Facility D5, a "sensitive  
18 needs unit." Facility D5 housed inmates who were disabled or  
19 required protective custody. Mr. Singh was assigned to this unit  
20 because he was disabled and in a wheelchair because of a deformed  
21 left foot, did not speak English, and had been convicted and  
22 sentenced for child molestation.

23            Plaintiff BALJIT KAUR is the widow of Khem Singh. BALJIT  
24 KAUR is a native of Punjab Province, India, and does not speak,  
25 read, or write English. (AC ¶ 6) Plaintiff HARNOOR KAUR is Mr.  
26 Singh's daughter and plaintiff GURIKAT SINGH is Mr. Singh's son.  
27 Defendants MANDEEP SINGH and GURMEET KAUR are other children of  
28 Mr. Singh, and are named solely as nominal defendants.

1 All defendants are sued in both their individual and  
2 official capacities for purposes of the § 1983 claims. (*Id.* at  
3 ¶ 22)

4 Plaintiffs name as defendants several supervisory officials  
5 of the California Department of Corrections ("CDC").

6 ED ALAMEIDA, JR. was at all relevant times the Director of the  
7 CDC. SUZAAN STEINBERG is and was at all relevant times the  
8 Director of Health Services for the CDC. WARDEN DARRELL ADAMS  
9 was at all relevant times the Warden of SATF. CAPTAIN J.  
10 PRUD'HOMME is and was at all relevant times the Captain of D  
11 Facility at SATF. ACTING CHIEF MEDICAL OFFICER DEERING, M.D.,  
12 was at all relevant times the head physician at SATF. ALAMEIDA  
13 and STEINBERG were DEERING, CHIEF PSYCHOLOGIST DOE 1, and CHIEF  
14 PSYCHIATRIST DOE 2's supervisors.

15 Plaintiffs also name as defendants several CDC physicians.  
16 DRS. VIJAYA, M.D.; GILBERT V. GONZALEZ, M.D.; and HARVEY M.  
17 HUANG, M.D., were at all relevant times physicians at SATF.  
18 Their supervisor was Dr. DEERING. Dr. DEERING is also alleged to  
19 have personally treated Mr. Singh.

20 Plaintiffs name several CDC psychologists as defendants,  
21 including DAVID UNDERWOOD, RONALD ROSTON, LESLIE KUBERSKI,  
22 C. HIRBOUR, and Dr. CASTILLO.<sup>1</sup> Their supervisors were defendants  
23 ALAMEIDA and STEINBERG. In addition Dr. ROSTON was Mr. Singh's  
24 case manager. Plaintiffs also name psychiatrist NANDAN BHATT.

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25  
26 <sup>1</sup> Plaintiffs' complaint contains allegations regarding Dr.  
27 CASTILLO, although Dr. CASTILLO is not named as a defendant in  
28 the caption. Plaintiffs asserts the failure to include Dr.  
CASTILLO's name was an oversight. Plaintiffs are granted **LEAVE  
TO AMEND** their complaint add Dr. CASTILLO.

1 Finally, Plaintiffs name several members of the correctional  
2 staff at SATF. E. J. CARRILLO is and was at all relevant times a  
3 Correctional Lieutenant at SATF. PATTERSON, WILSON, WILLIAMS,  
4 McKESSON, and HARTFIELD are and were at all relevant times  
5 employed as CDC Correctional Officers at SATF.

6  
7 **B. General Allegations Against All Defendants.**

8 Plaintiffs' complaint is divided into two general categories  
9 of allegations. First, plaintiffs' complaint contains general  
10 allegations against all defendants, which are described in this  
11 section. Second, plaintiffs complaint contains specific  
12 allegations against individual defendants, which are summarized  
13 in the next section. Plaintiffs' counsel stated during oral  
14 argument on September 12, 2005 that the individual allegations  
15 are based on reports and other documentation available to them at  
16 the time the complaint was drafted.

17 Plaintiffs generally allege that from the time of  
18 Mr. Singh's incarceration at SATF on October 15, 2001, until his  
19 death on February 16, 2004, he did not receive adequate medical  
20 or mental health care. Plaintiffs allege that, despite Mr.  
21 Singh's symptoms of depression and suicidal tendencies,  
22 defendants failed to properly examine or treat Mr. Singh.  
23 Plaintiffs allege that all correctional staff defendants at SATF  
24 were aware the Mr. Singh was demonstrably mentally ill and knew  
25 or should have known that he was suicidal. Despite this, they  
26 failed to provide adequate medical care, and their neglect  
27 eventually culminated in Mr. Singh's death from a heart attack  
28 and self-starvation on February 16, 2004. (AC ¶¶ 77, 96)

1 Plaintiffs also contend that Mr. Singh was harassed,  
2 insulted, and beaten by defendants, who were motivated by their  
3 bias against Mr. Singh for his religion, ethnicity, and  
4 conviction of child molestation. Plaintiffs allege that the  
5 defendants substantially burdened Mr. Singh's exercise of his  
6 religious faith by denying him access to his religious texts;  
7 denying him a religiously-mandated vegetarian diet and shower  
8 before prayers; and by abusing, harassing, and insulting him  
9 because of his religious beliefs. Defendants' conduct resulted  
10 in Mr. Singh becoming depressed "because he was unable to  
11 practice the faith that sustained him," which eventually led to  
12 his death. (AC ¶ 102)

13 Plaintiffs' First Amended Complaint contains a chronological  
14 account of Mr. Singh's tenure at SATF, from 2001 through the date  
15 of his death on February 16, 2004. The allegations relating to  
16 events and mistreatment in 2001 are not always attributed to a  
17 named defendant.

18 On October 24, 2001, Mr. Singh was placed (by unnamed prison  
19 employees) in administrative segregation because he had defecated  
20 on himself and refused to wash. Plaintiffs allege such incidents  
21 occurred several times. However, a translator was never provided  
22 to Mr. Singh to explain the staffs' actions or the disciplinary  
23 process. (AC ¶ 35)

24 On November 9, 2001, unidentified prison staff were aware  
25 that Mr. Singh was unable to care for himself, would not leave  
26 his cell for meals, and was taken to his shower by a volunteer  
27 inmate. An unidentified individual or individuals observed that  
28 Mr. Singh needed to be transferred to a medical facility. (AC

¶ 38)

On November 19, 2001, Mr. Singh was assaulted by his cellmate, inmate McCuff. Plaintiffs allege that unidentified defendants placed McCuff with Mr. Singh, even though they purportedly knew that inmate McCuff had a history of assaulting other inmates. (AC ¶ 36)

On December 19, 2001, Mr. Singh was admitted to the Correctional Treatment Facility (CTF) at Corcoran for psychiatric problems, including depression and a refusal to eat. An unidentified individual conducted a mental health assessment without an interpreter. This individual or individuals diagnosed Mr. Singh with depression and prescribed a minor tranquilizer. (AC ¶ 39)

On December 20, 2001, Mr. Singh said through an interpreter that he was not suicidal or depressed. He was not returned to the general population until December 26, 2001. He initially refused to go, but was told through an interpreter that he had to go.

From December 27 through December 31, 2001, Mr. Singh was placed on suicide watch because he had not eaten. On December 31, 2001, unidentified individuals notified unidentified custody staff that Mr. Singh had not eaten for four days. The next event outlined in the complaint took place on January 8, 2002, when Dr. KUBERSKI did not complete a mental health or a suicide assessment of Mr. Singh because there was no translator. The events alleged to have taken place on and after January 8, 2002 are, for the most part, attributed to individual defendants and are outlined in more detail below.



1           **C.    Allegations Against Individual Defendants.**

2                   **1.    Psychologist LESLIE KUBERSKI, Ph.D.**

3           On January 8, 2002, defendant psychologist LESLIE KUBERSKI  
4 "did not complete a mental health assessment or conduct a suicide  
5 risk assessment of Mr. Singh, because of the lack of a  
6 translator." (AC ¶ 43) Dr. KUBERSKI did not make arrangements  
7 to conduct an assessment with a translator. Mr. Singh was  
8 removed from the mental health program on January 10, 2002.  
9 Defendants also allege that KUBERSKI failed to summon adequate  
10 medical care. (AC ¶¶ 140-142)

11  
12                   **2.    Dr. CASTILLO, M.D. and Correctional Officer**  
13                   **WILSON.**

14           On January 25, 2002, defendant Dr. CASTILLO admitted  
15 Mr. Singh to CTF. Mr. Singh had not been eating. Dr. CASTILLO  
16 concluded Mr. Singh was on a hunger strike and suffering from  
17 starvation. Dr. CASTILLO "did nothing to protect Mr. Singh; he  
18 did not place him on suicide watch; he did not ask for a complete  
19 mental health assessment; he did not invoke hunger strike  
20 protocols." (AC ¶ 45)

21           Plaintiffs allege that on January 24, 2002, the day before  
22 Dr. CASTILLO admitted Mr. Singh to CTF, defendant Correctional  
23 Officer WILSON physically assaulted Mr. Singh by forcing him into  
24 a shower. (AC ¶ 44)

25  
26                   **3.    Physician Dr. VIJAYA, M.D.**

27           Plaintiffs allege Dr. VIJAYA was Mr. Singh's physician. On  
28 February 26, 2002, Dr. VIJAYA is alleged to have discharged

1 Mr. Singh from CTF (where he had been since Dr. CASTILLO admitted  
2 him on January 25, 2002) and returned him to the yard without any  
3 plan for treatment. (AC ¶ 46) Mr. Singh had been on a liquid  
4 diet while in CTF. Also, Plaintiffs allege that medical records  
5 indicate no one was able to communicate with Mr. Singh while he  
6 was in CTF because of lack of a translator.

7  
8 **4. Correctional Officers Sgt. E. J. CARILLO and**  
9 **Sgt. A. PATTERSON.**

10 On March 26, 2002, five correctional officers, supervised by  
11 Correctional Officers CARILLO and PATTERSON, forcibly removed  
12 Mr. Singh from his cell. Mr. Singh suffered injury as a result.  
13 Plaintiffs allege Mr. Singh's removal was the result of his  
14 refusal to leave his cell until resolution of issues regarding  
15 the denial of his legal mail, hearings, and visits. Mr. Singh  
16 was told through an interpreter that he was required to leave his  
17 cell before these issues were resolved, but the officers assert  
18 he was resisting removal and "fighting." At the time, Mr. Singh  
19 weighed less than 110 pounds. (AC ¶ 48)

20 Plaintiffs also allege that defendants CARILLO and PATTERSON  
21 failed to adequately train and supervise medical, mental health,  
22 and correctional staff regarding policies and procedures for the  
23 provision of medical and mental health care and suicide  
24 prevention. (AC ¶ 120-121) Defendants CARILLO and PATTERSON are  
25 also alleged to have failed to summon medical care. (AC ¶¶ 140-  
26 142)

27 //

28 //

1                   **5. Physician Dr. HARVEY HUANG, M.D. and Other Unnamed**  
2                   **Defendants.**

3           After the removal of Mr. Singh from his cell on March 26,  
4 2002, Mr. Singh as admitted to CTF. He was put in five-point  
5 restraints and placed in an observation cell. Defendant HUANG  
6 examined Mr. Singh without an interpreter. Defendant HUANG noted  
7 that Mr. Singh did not shower, clean his toilet, or remove trash  
8 from his cell. HUANG also noted Mr. Singh was agitated and  
9 believed the staff were "after him." HUANG diagnosed Mr. Singh  
10 with paranoid schizophrenia and a delusional disorder.  
11 Plaintiffs allege that Dr. HUANG's medical assessment was  
12 inadequate because he had no interpreter, did not conduct a  
13 psychiatric assessment, and never spoke with Mr. Singh.

14           During this period (March 26, 2002 through April 3, 2002) at  
15 CTF, plaintiffs also allege that a mental health assessment was  
16 completed by DOE Defendant 4, without an interpreter. Mr. Singh  
17 is alleged to have been found illogical, argumentative,  
18 controlling, paranoid, and having poor insight, judgment, and  
19 reality contact. (AC ¶ 50) Plaintiffs further allege that  
20 unidentified individuals conducted an "interdisciplinary care  
21 plan and team review" concluded that Mr. Singh was "anxious with  
22 delusional thoughts and reality distortion" and that "all staff  
23 were responsible to help Mr. Singh become free of his delusion.  
24 (AC ¶ 51) Plaintiffs allege that nothing was done to follow  
25 these recommendations. (AC ¶ 52)

26  
27                   **6. Physician Dr. DEERING, M.D.**

28           On June 17, 2002, Mr. Singh was taken to the emergency room

1 based on a report that he had not eaten in two or three days.  
2 Dr. DEERING is alleged to have verbally ordered Mr. Singh  
3 returned back to his cell. Plaintiffs allege that Dr. DEERING  
4 issued this order without a translator, and further that he  
5 ordered no follow-up, did no assessment, and did not order a  
6 special diet, despite his awareness that Mr. Singh was ill. (AC  
7 ¶ 53)

8 On January 4, 2004, Correctional Officer HARTFIELD contacted  
9 medical staff to advise them that Mr. Singh had not eaten for two  
10 weeks. On January 20, 2004, Mr. Singh refused to leave his cell  
11 for a medical appointment. Plaintiffs allege Dr. DEERING was  
12 notified of Mr. Singh's refusal to eat, but did nothing in spite  
13 of Mr. Singh's known deterioration. (AC ¶ 75)

14 Plaintiffs also allege that Dr. DEERING failed to properly  
15 train medical, psychological and correctional staff regarding  
16 policies and procedures for the provision of medical and mental  
17 health care and suicide prevention. (AC ¶ 120-124) Plaintiffs  
18 allege that Dr. DEERING was aware of McKESSON's "psychological  
19 instability and brutality against inmates." (AC ¶ 84)  
20 Plaintiffs do not allege Dr. DEERING was aware of McKESSON's  
21 brutality against Mr. Singh in particular.  
22

23 **7. Psychologist Dr. RONALD ROSTON, Ph.D.**

24 On October 16, 2002, Mr. Singh requested a mental health  
25 intervention in a letter written in Punjabi. On November 4,  
26 2002, Dr. ROSTON completed an assessment through an interpreter.  
27 Dr. ROSTON formulated a treatment plan through which Mr. Singh  
28 was to learn to communicate "non-verbally." Plaintiffs allege

1 this plan was never followed.

2 Plaintiffs allege that Dr. ROSTON also diagnosed Mr. Singh  
3 as having chronic depression, an adjustment disorder, and an  
4 obsessive-compulsive personality disorder with narcissistic and  
5 paranoid characteristics. Dr. ROSTON noted that Mr. Singh was a  
6 vegetarian and needed more grains and vegetables in his diet.  
7 Dr. ROSTON recommended that a follow-up exam should be conducted  
8 every 90 days. Plaintiffs allege neither recommendation was ever  
9 implemented. (AC ¶ 54)

10 On November 20, 2002, Dr. ROSTON "observed Mr. Singh at  
11 prayer in his cell and concluded he was 'probably as devout as he  
12 claims.'" Dr. ROSTON also decided that Mr. Singh did not show  
13 any of the signs of mental illness he had diagnosed on November  
14 4. ROSTON then discharged Mr. Singh from mental health  
15 treatment. (AC ¶ 55)

16 On January 21, 2003, Plaintiffs allege Dr. ROSTON again saw  
17 Mr. Singh and "admitted [Mr. Singh] suffered from mild  
18 depression" due to Mr. Singh's problems getting vegetarian food  
19 and showering before prayers. (AC ¶ 58)

20  
21 **8. Correctional Officer S. WILLIAMS.**

22 On April 20, 2003, Correctional Officer WILLIAMS grabbed a  
23 makeshift turban off of Mr. Singh's head and threw it away.  
24 WILLIAMS also complained that Mr. Singh held up the food line  
25 whenever he would ask for meat to be removed from his food tray.  
26 (AC ¶ 62)

27  
28 **9. Correctional Officers McKESSON and HARTFIELD.**

1 On September 7, 2003, Officer McKESSON gave Mr. Singh an  
2 unsatisfactory work performance evaluation. Plaintiffs allege  
3 that McKESSON gave Mr. Singh an unsatisfactory evaluation based  
4 on his conviction, his religion, his ethnic identity, and  
5 McKESSON's belief Mr. Singh was associated with Islamic  
6 terrorism. (AC ¶ 63)

7 Plaintiffs also allege that McKESSON often interfered with  
8 Mr. Singh's efforts to be served only vegetables at meal times.  
9 (AC ¶ 34)

10 On October 29, 2003, McKESSON, along with defendant  
11 HARTFIELD, put inmate Grecu in Mr. Singh's cell. Inmate Grecu  
12 had a history of in-custody assaults. Inmate Grecu beat  
13 Mr. Singh. (AC ¶ 66) Plaintiffs allege McKESSON's actions were  
14 motivated by his biases against Mr. Singh.

15 Sometime in October, 2003, when Mr. Singh's family came to  
16 visit him, McKESSON falsely told the prison's visiting staff that  
17 Mr. Singh had refused the visit from his family. (AC ¶ 67)

18 On December 9, 2003, defendant McKESSON wilfully slammed Mr.  
19 Singh's hand in the cell door and told defendant HARTFIELD not to  
20 allow Mr. Singh any medical care for the injury. After that  
21 date, plaintiffs allege Mr. Singh never left his cell, stopped  
22 eating, and steadily lost weight. (AC ¶ 71)

23 After September 11, 2001, plaintiffs alleged that Mr. Singh  
24 was repeatedly and increasingly abused, threatened, and insulted  
25 by defendants McKESSON and HARTFIELD. (AC ¶ 78) Plaintiffs  
26 alleged McKESSON engaged in the following harassment of  
27 Mr. Singh: (a) berating Mr. Singh and locking him in his cell as  
28 punishment for Mr. Singh's failure to perform his duties as

porter because of his language and physical barriers; (b) calling Mr. Singh a "Taliban," "Bin Laden," and "rag head"; (c) telling Mr. Singh to take the towel off his head; (d) telling ADA inmate helpers not to give assistance to Mr. Singh; (e) telling ADA inmate helpers to fabricate records of having assisted Mr. Singh; (f) hitting Mr. Singh on the head; (g) throwing Mr. Singh on the ground of his cell after an earthquake; (h) pushing Mr. Singh back into his cell; (i) tearing up Mr. Singh's religious altar; (j) ripping the turban (a sheet) off Mr. Singh's head and forcing him to sign a trust account withdrawal to pay for the torn sheet; (k) taunting Mr. Singh by asking him to come out of his cell and then slamming the door before he could get out; (l) participating in systematic brutality as part of a group of SATF officers called "The Green Wall." (AC ¶¶ 79-81, 85)

Defendant HARTFIELD, a control booth officer, is alleged to have frequently refused to allow Mr. Singh to leave his cell to eat, go to the yard to sit in the shade, or leave his cell to use the telephone. (AC ¶ 83)

#### **10. Psychologist C. HIRBOUR, Ph.D.**

On November 13, 2003, defendant HIRBOUR, a psychologist, saw Mr. Singh in his cell. HIRBOUR "found Mr. Singh 'praying and gesturing wildly,' but could not evaluate him absent an interpreter and recommended he be seen by a physician in a week." (AC ¶ 68) Plaintiffs allege that HIRBOUR erroneously concluded that Mr. Singh did not have mental health issues.

On December 2, 2003, HIRBOUR once again saw Mr. Singh. Plaintiffs allege Mr. Singh was visibly thin, withdrawn, and had

1 not been eating. HIRBOUR nevertheless recommended that Mr. Singh  
2 be discharged to the general population "when applicable." (AC  
3 ¶ 70)

4  
5 **11. Defendant Psychologist UNDERWOOD, Ph.D.**

6 On December 22, 2003, defendant UNDERWOOD went to Mr.  
7 Singh's cell to conduct a mental health assessment. Defendant  
8 HARTFIELD had requested psychiatric intervention because  
9 Mr. Singh had not eaten or showered for 30 days. (AC ¶ 73)

10  
11 **12. Defendant Psychiatrist BHATT, M.D.**

12 In December 2003, plaintiffs allege that defendant BHATT  
13 denied medical care to Mr. Singh when BHATT refused to see  
14 Mr. Singh unless he came to the clinic. (AC ¶ 73) Plaintiffs  
15 allege BHATT failed to summon medical care for Mr. Singh. (AC  
16 ¶¶ 140-142)

17  
18 **13. Defendant GONZALEZ, M.D.**

19 On January 20, 2004, defendant GONZALEZ, the yard doctor,  
20 was notified of Mr. Singh's refusal to leave his cell for an  
21 appointment, but did nothing in spite of Mr. Singh's known  
22 deterioration. (AC ¶ 75) Plaintiffs allege that GONZALEZ failed  
23 to summon medical care. (AC ¶¶ 140-141)

24  
25 **14. Defendants ED ALAMEIDA, SUZAAN STEINBERG, DARREL**  
26 **ADAMS, and PRUD' HOMME.**

27 Plaintiffs allege that as Director of the CDC during times  
28 relevant to this action, defendant ALAMEIDA was responsible for



1 the CDC's policies, practices, and procedures as well as the  
2 conduct of CDC employees. (AC ¶ 9)

3 Plaintiffs allege that as Director of the CDC's Health  
4 Services, defendant STEINBERG was responsible for CDC's health  
5 care policies, practices, and procedures and the conduct of CDC's  
6 medical staff. (AC ¶ 10)

7 Plaintiffs allege that as Warden of SATF, defendant ADAMS  
8 was responsible for SATF's policies, practices, and procedures as  
9 well as the conduct of SATF employees. (AC ¶ 11) Plaintiffs  
10 allege that ADAMS was aware of defendant McKESSON's  
11 "psychological instability and brutality against inmates," and  
12 that inmates filed numerous appeals alleging brutality, insults,  
13 and endangering conduct by McKESSON. (AC ¶ 84)

14 Plaintiffs allege that defendant PRUD'HOMME, as the  
15 supervisor in charge of Facility D, had the authority and  
16 responsibility to ensure that Mr. Singh received access to  
17 adequate medical and mental health care. (AC ¶ 97)

18 Plaintiffs allege that "[a] January 2003 Management Review  
19 Audit by the Office of the Inspector General, which September 23,  
20 2005 detailed serious, systemic failures in the delivery of  
21 medical and mental health care to SATF prisoners, placed these  
22 defendants<sup>2</sup> on notice of said failures...." (AC ¶ 97)

23 //

24 //

25 //

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26  
27 <sup>2</sup> Defendants listed in ¶ 97 are: ADAMS, PRUD'HOMME,  
28 DEERING, Chief Psychologist (Doe 1), Chief Psychiatrist (Doe 2),  
CARILLO, PATTERSON, and Does 3 through 26.

1 IV. LEGAL STANDARD

2  
3 Fed. R. Civ. P. 12(b)(6) allows a defendant to attack a  
4 complaint for failure to state a claim upon which relief can be  
5 granted. A motion to dismiss under Fed. R. Civ. P. 12(b)(6) is  
6 disfavored and rarely granted: "[a] complaint should not be  
7 dismissed unless it appears beyond doubt that plaintiff can prove  
8 no set of facts in support of his claim which would entitle him  
9 to relief." *Van Buskirk v. CNN, Inc.*, 284 F.3d 977, 980  
10 (9th Cir. 2002) (citations omitted). In deciding whether to  
11 grant a motion to dismiss, the court "accept[s] all factual  
12 allegations of the complaint as true and draw[s] all reasonable  
13 inferences in favor of the nonmoving party." *TwoRivers v. Lewis*,  
14 174 F.3d 987, 991 (9th Cir. 1999).

15 "The court need not, however, accept as true allegations  
16 that contradict matters properly subject to judicial notice or by  
17 exhibit. Nor is the court required to accept as true allegations  
18 that are merely conclusory, unwarranted deductions of fact, or  
19 unreasonable inferences." *Sprewell v. Golden State Warriors*,  
20 266 F.3d 979, 988 (9th Cir. 2001) (citations omitted). For  
21 example, matters of public record may be considered under Fed. R.  
22 Civ. P. 201, including pleadings, orders and other papers filed  
23 with the court or records of administrative bodies. See *Lee v.*  
24 *City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001).  
25 Conclusions of law, conclusory allegations, unreasonable  
26 inferences, or unwarranted deductions of fact need not be  
27 accepted. See *Western Mining Council v. Watt*, 643 F.2d 618, 624  
28 (9th Cir. 1981).

1       "Where the facts and dates alleged in a complaint  
 2 demonstrate that the complaint is barred by the statute of  
 3 limitations, a Federal Rule of Civil Procedure 12(b)(6) motion  
 4 should be granted." *Ritchie v. United States*, 210 F. Supp. 2d  
 5 1120, 1123 (N.D. Cal. 2002). There is no requirement, however,  
 6 that affirmative defenses, including statutes of limitation,  
 7 appear on the face of the complaint. *Hyatt Chalet Motels, Inc.*  
 8 *v. Carpenters Local 1065*, 430 F.2d 1119, 1120 (9th Cir. 1970).  
 9 "When a motion to dismiss is based on the running of the statute  
 10 of limitations, it can be granted only if the assertions of the  
 11 complaint, read with the required liberality, would not permit  
 12 the plaintiff to prove that the statute was tolled." *Jablon v.*  
 13 *Dean Witter & Co.*, 614 F.2d 677, 682 (1980); see also *TwoRivers*,  
 14 174 F.3d at 991.

## 15 16                                   **V.     ANALYSIS**

### 17 18           **A.     Statute of Limitations for Plaintiffs' Federal Claims.**

#### 19                   **1.     Whether Plaintiffs' Federal Claims Against Certain** 20                   **Defendants Are Time-Barred.**

21       Defendants argue that plaintiffs' federal claims for against  
 22 defendants KUBERSKI, CASTILLO, VIJAYA, and ROSTON are time-  
 23 barred.

24       The parties agree that applicable statute of limitations for  
 25 claims brought under 42 U.S.C. § 1983, Section 504 of the  
 26 Rehabilitation Act, and the American Disabilities Act ("ADA") is  
 27 the forum state's statute of limitations for personal injury  
 28 actions. *Knox v. Davis*, 260 F.3d 1009, 1013 (9th Cir. 2001); see

1 *also Pickern v. Holiday Quality Foods Inc.*, 293 F.3d 1133, 1137  
2 n. 2 (9th Cir. 2002). California's statute of limitations for  
3 personal injuries under Cal. Civ. Proc. § 335.1 therefore apply  
4 here.

5       Until January 1, 2003, the statute of limitations in  
6 California was one year. *Knox*, 260 F.3d at 1014. Effective  
7 January 1, 2003, personal injury actions in California became  
8 subject to a two-year statute of limitations period pursuant to  
9 section 335.1 of the California Code of Civil Procedure. The  
10 Ninth Circuit Court of Appeals has held that the two-year  
11 limitation period does not apply retroactively to causes of  
12 action accruing before the effective date of § 335.1. *Maldonado*  
13 *v. Harris*, 370 F.3d 945, 955 (9th Cir. 2004).

14       State law also governs the tolling of a limitations period.  
15 *Martinez v. Gomez*, 137 F.3d 1124, 1125 (9th Cir. 1998). Cal.  
16 Civ. Proc. Code § 352.1(a) tolls the limitations period for  
17 actions brought by an individual who is serving a criminal  
18 sentence "for a term less than life." The limitations period may  
19 be tolled for up to two years. *Id.* Because Mr. Singh was a  
20 prisoner serving a term sentence, § 352.1(a) applies to toll the  
21 limitations period for two years for claims brought on his  
22 behalf.

23       The limitations period for the § 1983, Rehabilitation Act,  
24 and ADA claims brought on Mr. Singh's behalf accruing before  
25 January 1, 2003 is three (3) years. The complaint was filed on  
26 March 15, 2005. Therefore, claims accruing before March 15,  
27 2002, were filed outside of the statutory period and are time-

1 barred.<sup>3</sup>

2 "Although state law prescribes the statute of limitations  
3 applicable to section 1983 claims, federal law governs the time  
4 of accrual." *Gibson v. United States*, 781 F.2d 1334, 1339 (9th  
5 Cir. 1986). "Under federal law, a cause of action generally  
6 accrues when a plaintiff knows or has reason to know of the  
7 injury which is the basis of his action." *Id.* (internal  
8 quotations omitted).

9 Plaintiffs allege incidents on particular dates as to  
10 KUBERSKI, CASTILLO, VIJAYA, and ROSTON. All of these dates are  
11 in 2002. Each claim brought on behalf of Mr. Singh for the  
12 injuries suffered by him accrued when Mr. Singh knew or should  
13 have known of the injury that was the basis of his action.<sup>4</sup> As  
14 stated above, the claims accruing before March 15, 2002 are time-  
15 barred.

16 As an initial matter, all of the individual allegations  
17 against Dr. ROSTON are alleged to have occurred after March 15,  
18 2002 and are therefore not time-barred. Dr. ROSTON's motion to  
19 dismiss plaintiffs' federal claims on statute of limitations  
20 grounds is **DENIED**.

21 The analysis as to KUBERSKI, CASTILLO, and VIJAYA is  
22

---

23  
24 <sup>3</sup> The limitations period for claims accruing after January  
25 1, 2003 is four (4) years. The statutory period for claims  
26 accruing after January 1, 2003 has not yet expired and is not in  
27 issue.

28 <sup>4</sup> Claims brought on Mr. Singh's behalf are distinguished  
from the claims brought on behalf of the living plaintiffs for  
their injury, which is the loss of their family member and  
accrues on the day of Mr. Singh's death.

1 slightly different. Plaintiffs allege that on January 8, 2002,  
2 KUBERSKI failed to adequately assess Mr. Singh's condition; on  
3 January 25, 2002, CASTILLO admitted Mr. Singh to CTF, determined  
4 he was suffering from starvation, but did not thing to protect  
5 Mr. Singh; on February 26, 2002, VIJAYA discharged Mr. Singh from  
6 CTF without any treatment or plan for future treatment. All of  
7 these events occurred before March 15, 2002, and therefore fall  
8 outside the statutory period. The federal claims against  
9 KUBERSKI, CASTILLO, and VIJAYA based on these events (as well as  
10 all other claims based on events accruing before March 15, 2002)  
11 are barred by the statute of limitations to the extent the  
12 limitations period is not tolled.

13 As discussed below, however, it is not clear from  
14 plaintiffs' allegations that equitable tolling and/or tolling  
15 under Cal. Civ. Proc. Code § 352(a) on insanity grounds would not  
16 apply here. Defendants' motion to dismiss the federal claims  
17 against KUBERSKI, CASTILLO, and VIJAYA on statute of limitations  
18 grounds is **DENIED WITHOUT PREJUDICE**.

19  
20 **2. Whether the Statute of Limitations for Claims**  
21 **Accruing Before March 15, 2002 Is Tolled.**

22 "When a motion to dismiss is based on the running of the  
23 statute of limitations, it can be granted only if the assertions  
24 of the complaint, read with the required liberality, would not  
25 permit the plaintiff to prove that the statute was tolled."  
26 *Jablon*, 614 F.2d at 682; see also *TwoRivers*, 174 F.3d at 991. If  
27 plaintiffs' allegations, taken as true, are sufficient to permit  
28 tolling, then defendants' motion to dismiss on statute of

1 limitations grounds must be denied.

2 Plaintiffs argue that the statute of limitations should be  
3 tolled based on two alternate legal grounds. First, plaintiffs  
4 argue that the statute should be tolled pursuant to Cal. Civ.  
5 Proc. Code § 352(a), which acts to toll the limitations periods  
6 during the time of the claimant's disability, including insanity.  
7 Second, plaintiffs argue that equitable tolling should apply to  
8 toll the statute.

9 Cal. Civ. Proc. Code § 352(a) provides that "[i]f a person  
10 entitled to bring an action is...at the time the cause of action  
11 accrued...insane, the time of disability is not part of the time  
12 limited for the commencement of the action." The inquiry to  
13 determine whether a person is insane under § 352(a) is whether  
14 the person is sufficiently aware of the nature or effects of his  
15 acts to be able to comprehend such business transactions as the  
16 hiring of an attorney and the instigation of a legal action. *Hsu*  
17 *v. Mt. Zion Hosp.*, 259 Cal. App. 2d 562, 574 (1968); *Feeley v.*  
18 *S. Pac. Transp. Co.*, 234 Cal. App. 3d 949, 952 (1991). Actual  
19 psychiatric illness is not required. *Id.*

20 Equitable tolling allows a court to suspend the running of  
21 the statute when the balance of equities favors the plaintiff.  
22 *Lantzy v. Centex Homes*, 31 Cal. 4th 363, 370 (2003). The purpose  
23 of equitable tolling is "to prevent the unjust technical  
24 forfeiture of causes of action, where the defendant would suffer  
25 no prejudice." *Id.* A court may apply equitable tolling when the  
26 injustice to plaintiff outweighs the possibility of prejudice to  
27 the defendant. *See id.* at 371.

28 Reading plaintiffs' allegations with the required

1 liberality, it is not clear that Cal. Civ. Proc. Code § 352(a) or  
2 equitable tolling do not apply. Plaintiffs allege that when Mr.  
3 Singh was incarcerated in August 2001, he was healthy and well-  
4 adjusted. However, within a week of being placed at SATF in  
5 October 2001, Mr. Singh "was defecating on himself and refusing  
6 to wash." Mr. Singh is alleged to have had ongoing problems with  
7 depression, hygiene, and refusal to eat, from October 2001 until  
8 his death in February 2004. While defendants distinguish some of  
9 the cases cited by plaintiffs, they offer no persuasive argument  
10 as to how any purported prejudice they would suffer would  
11 outweigh the injustice to plaintiffs if they were precluded from  
12 bringing these claims. Taken as true, it is not clear from  
13 plaintiffs' allegations that Mr. Singh was capable of  
14 understanding his affairs or of understanding complicated  
15 business transactions such as hiring an attorney or bringing a  
16 lawsuit.

17 The allegations, if proved, are sufficient to support  
18 tolling of the statute of limitations for claims brought on Mr.  
19 Singh's behalf commencing October 2001. However, whether the  
20 statute was actually tolled is a fact-based inquiry, more  
21 appropriately decided at the fact-finding stages of the  
22 litigation. Defendants' motions to dismiss plaintiffs' federal  
23 claims on statute of limitations grounds are **DENIED WITHOUT**  
24 **PREJUDICE.**

### 25 26 3. Continuing Violations Doctrine.

27 Plaintiffs argue that claims based on events occurring  
28 before March 15, 2002 are not time-barred because they are



1 actionable as continuing violations. The continuing violations  
2 doctrine can preserve claims that are related to allegations  
3 falling outside a limitations period. The continuing violations  
4 doctrine has been applied in § 1983 actions. See *RK Ventures,*  
5 *Inc. v. City of Seattle*, 307 F.3d 1045, 1061 (9th Cir. 2002);  
6 *Carpinteria Valley Farms, Ltd. v. County of Santa Barbara*,  
7 344 F.3d 822 (9th Cir. 2003); *Thompson v. City of Shasta Lake*,  
8 314 F. Supp. 2d 1017, 1027 (E.D. Cal. 2004). The doctrine has  
9 also been applied to claims arising under other civil rights laws  
10 such as the Rehabilitation Act and the ADA. See *Cherosky v.*  
11 *Hendrson*, 330 F.3d 1243, 1246 (9th Cir. 2003); *Douglas v. Cal.*  
12 *Dept. of Youth Authority*, 271 F.3d 812 (9th Cir. 2001).

13 Before the United States Supreme Court addressed the  
14 continuing violations doctrine in *Nat'l R.R. Corp. v. Morgan*,  
15 536 U.S. 101 (2002), there were two ways to establish a  
16 continuing violation. See *Carpinteria*, 344 F.3d at 828; *Douglas*,  
17 271 F.3d at 822 (in a case decided before *Morgan*, Ninth Circuit  
18 notes that it "ha[s] recognized two methods by which a plaintiff  
19 may establish a continuing violation" (citing *Gutowski v. County*  
20 *of Placer*, 108 F.3d 256, 259 (9th Cir. 1997)). First, the  
21 "related acts" theory holds that discriminatory acts that fall  
22 outside the statutory period, but are "related and similar to"  
23 acts within the statutory period is actionable. See *id.* Second,  
24 the "continuing policy" theory holds that a continuing policy or  
25 practice of discrimination that operated at least in part within  
26 the limitations period is actionable. See *id.*

27 However, as the Ninth Circuit noted recently, the United  
28 States Supreme Court in *Morgan*, 536 U.S. 101, overruled the

1 "related acts" test:

2 *Morgan* overruled previous Ninth Circuit authority  
3 holding that, if a discriminatory act was "related and  
4 similar to" acts that took place outside the  
5 limitations period, all the related acts--including the  
6 earlier acts--were actionable as part of a continuing  
7 violation. [citation] *Morgan* held that "discrete  
8 discriminatory acts are not actionable if time barred,  
9 even when they are related to acts alleged in timely  
10 filed charges."

11 *RK Ventures*, 307 F.3d at 1061 (quoting *Morgan*, 122 S.Ct. at  
12 2072); see also *Carpinteria*, 344 F.3d at 828 (noting that the  
13 Supreme Court in *Morgan* invalidated the "related acts" method of  
14 establishing a continuing violation....").

15 The claims accruing before March 15, 2002 cannot be saved  
16 under the related acts theory of the continuing violations  
17 doctrine, as this theory has been overruled and is no longer the  
18 law.

#### 19 **4. Conclusion.**

20 Defendants' motions to dismiss plaintiffs' federal claims on  
21 statute of limitations grounds are **DENIED WITHOUT PREJUDICE** on  
22 the basis that it is not determinable from plaintiffs'  
23 allegations that the statute of limitations would not be  
24 equitably tolled and/or tolled under Cal. Civ. Proc. Code  
25 § 352(a) on insanity (lack of mental capacity) grounds.

#### 26 **B. Defendants' Arguments Regarding Causation.**

27 Defendants distinguish between the claims brought on behalf  
28 of Mr. Singh for the injuries he suffered during his lifetime and  
the claims brought on behalf of Mr. Singh's wife and children for  
their injury, i.e., the loss they suffered due to Mr. Singh's

1 death. Defendants argue that the claims that are brought by  
2 plaintiffs on their own behalf, and that are based on Mr. Singh's  
3 death, should be dismissed as to those defendants who cannot, as  
4 a matter of law, be causally linked to Mr. Singh's death.  
5 Specifically, defendants argue that plaintiffs cannot establish  
6 causation of Mr. Singh's death as to KUBERSKI, CASTILLO, and  
7 VIJAYA.

8 Plaintiffs' specific allegations against these three  
9 individual defendants are that they failed to adequately treat or  
10 assess Mr. Singh's medical and mental health conditions on  
11 particular occasions. Defendants argue that "it would stretch  
12 one's imagination and logic to assert that these individual  
13 defendants' remote, insular and discrete interactions with  
14 decedent were actual or legal causes of decedent's death." (Doc.  
15 67, Defs.' Reply 7) Defendants cite *Van Ort v. Estate of*  
16 *Stanewich*, 92 F.3d 831, 837 (9th Cir. 1996), to support their  
17 argument that, while causation is usually a question of fact for  
18 the jury to decide, causation can be resolved as a matter of law  
19 when reasonable persons could not dispute the absence of  
20 causation. Defendants' argument is not persuasive. *Van Ort* was  
21 an appeal from the district court's granting of a judgment as a  
22 matter of law. Defendants cite no cases in which the court  
23 decided the causation issue at the pleading stage. This issue is  
24 not appropriately decided on a motion to dismiss.

25 Furthermore, plaintiffs' allegations relating to these three  
26 individual defendants are not limited to the specific allegations  
27 of events occurring on particular dates. As plaintiffs' counsel  
28 stated during oral argument, plaintiffs' complaint contains

1 specific allegations as to individual defendants based upon  
2 medical and other records collected to date. Plaintiffs'  
3 complaint also contains general allegations that relate to all of  
4 the defendants, including allegations of ongoing conduct that  
5 eventually led to Mr. Singh's death. On defendants' narrow  
6 interpretation of the complaint, no one would be responsible for  
7 Mr. Singh's death because no individual defendant is alleged to  
8 have struck the fatal blow.

9 Defendants' motions to dismiss on causation grounds are  
10 **DENIED.**

11  
12 C. First Cause of Action (§ 1983 Claim for Failure to  
13 Provide Adequate Medical Care).

14 Defendants argue that plaintiffs' first claim for relief  
15 fails to state a claim against defendants CARILLO, PATTERSON,  
16 WILLIAMS, and HARTFIELD, who were correctional staff at SATF, and  
17 also that plaintiffs fail to state a claim against ROSTON.  
18 Plaintiffs' first claim for relief is brought under § 1983 on the  
19 basis that defendants, individually and collectively, violated  
20 Mr. Singh's 8th and 14th Amendment rights by failing to provide  
21 adequate medical care.

22 The Eighth Amendment's prohibition against "cruel and  
23 unusual punishments" places duties on prison officials to provide  
24 humane conditions of confinement, including "ensur[ing] that  
25 inmates receive adequate food, shelter, clothing, and medical  
26 care...." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). In the  
27 medical context, a prison official violates an inmate's Eight  
28 Amendment rights if he exhibits a deliberate indifference to the

1 inmate's serious medical needs. *Estelle v. Gamble*, 429 U.S. 97,  
2 104 (1976); *Wilson v. Seiter*, 501 U.S. 294, 297 (1991). Mere  
3 negligence is not sufficient. *Gamble*, 429 U.S. at 105-06; see  
4 *Seiter*, 501 U.S. at 305. The test is whether prison officials,  
5 acting with deliberate indifference, exposed a prisoner to a  
6 sufficiently substantial "risk of serious danger to his future  
7 health." *Farmer*, 511 U.S. at 843.

8 Plaintiffs' individual allegations against CARILLO,  
9 PATTERSON, WILLIAMS, and HARTFIELD, who are all correctional  
10 officers, relate to incidents of alleged harassment, abuse, and  
11 assault that occurred on particular dates.<sup>5</sup> The individual  
12 allegations against these defendants do not necessarily relate to  
13 Mr. Singh's medical care. The individual allegations against  
14 ROSTON also relate to incidents that occurred on particular  
15 dates, although these allegations do relate to Mr. Singh's  
16 medical care.<sup>6</sup>

17  
18 <sup>5</sup> The individual allegations against the four correctional  
19 officers are as follows. On March 26, 2002, CARILLO and  
20 PATTERSON are alleged to have supervised five (5) correctional  
21 officers forcibly remove Mr. Singh from his cell after he refused  
22 to exit. On October 29, 2003, HARTFIELD is alleged to have had a  
23 role in assigning to Mr. Singh's cell an inmate who had a history  
24 of assaulting other inmates. Mr. Singh was later attacked by  
25 this inmate. On April 20, 2003, WILLIAMS grabbed a makeshift  
26 turban off of Mr. Singh's head and threw it away. WILLIAMS also  
27 complained that Mr. Singh held up the food line whenever he would  
28 ask for meat to be removed from his food tray. (AC ¶ 62)

25 <sup>6</sup> The allegations against ROSTON are generally that,  
26 approximately two weeks after diagnosing Mr. Singh with  
27 depression and other psychological disorders, he decided that Mr.  
28 Singh was not suffering from any mental illness. ROSTON, a  
psychologist, conducted an assessment of Mr. Singh on November 4,  
2002. ROSTON diagnosed Mr. Singh with depression, an adjustment  
disorder, and an obsessive-compulsive personality disorder.

1 Defendants argue that the individual allegations are  
2 insufficient to state inadequate medical care claims against  
3 them. However, plaintiffs' complaint contains general  
4 allegations against all defendants relating to inadequate medical  
5 care. All that is necessary to state a claim for inadequate  
6 medical care under the Eighth Amendment is that the prison  
7 official exhibited deliberate indifference to the inmate's  
8 serious medical needs. *Estelle*, 429, U.S. at 104; *Seiter*, 501  
9 U.S. at 303-04.

10 The facts alleged here, if proven, are sufficient to  
11 establish that the defendants acted with deliberate indifference  
12 to Mr. Singh's serious medical needs in violation of the Eighth  
13 Amendment. Mr. Singh was starving himself, refusing to attend  
14 meals, and refusing to wash. He became emaciated. Plaintiffs  
15 allege that *all* defendants were aware of these behaviors and  
16 symptoms but did nothing. Eventually, Mr. Singh died. Whether  
17 each individual defendant actually acted with deliberate  
18 indifference to Mr. Singh's medical needs is a question for the  
19 fact-finder and is not appropriately decided on a motion to  
20 dismiss. On a motion to dismiss, all the plaintiff's allegations  
21 are taken as true. Here, plaintiffs' allegations are sufficient  
22

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23 ROSTON recommended follow-up every 90 days, as well as a  
24 vegetarian diet. On November 20, 2002, ROSTON "observed  
25 Mr. Singh at prayer in his cell and concluded he was 'probably as  
26 devout as he claims.'" ROSTON also decided that Mr. Singh did  
27 not show any of the signs of mental illness he had diagnosed on  
28 November 4. ROSTON then discharged Mr. Singh from mental health  
treatment. (AC ¶ 55) Approximately two months later, on January  
21, 2003, ROSTON again saw Mr. Singh and "admitted [Mr. Singh]  
suffered from mild depression" due to Mr. Singh's problems  
getting vegetarian food and showering before prayers. (AC ¶ 58)

1 to state an Eighth Amendment claim for inadequate medical care.  
2 Defendants' motions to dismiss plaintiffs' Eighth Amendment claim  
3 for inadequate medical care (First Cause of Action) are **DENIED**.<sup>7</sup>  
4

5 **D. Second Cause of Action (§ 1983 Claim for Violation of**  
6 **First Amendment Freedom of Religion).**

7 Plaintiffs assert that defendants violated Mr. Singh's First  
8 Amendment rights by, among other things, denying him a vegetarian  
9 diet; denying him access to his religious texts; denying him  
10 access to showers before prayers; and abusing him because of his  
11 religious beliefs. (AC ¶ 12) Drs. VIJAYA, BHATT, DEERING,  
12 HUANG, KUBERSKI, UNDERWOOD, GONZALEZ, and ROSTON are physicians,  
13 psychologists, and psychiatrists who treated Mr. Singh and are  
14 referred to as the "medical defendants" by the parties.

15 Defendants argue that the First Amendment claim should be  
16 dismissed as to the medical defendants because the allegations  
17 regarding the individual medical defendants relate to the  
18 adequacy of the medical care received by Mr. Singh and do not  
19

---

20 <sup>7</sup> Defendants argue that plaintiffs' claim under the  
21 Fourteenth Amendment for inadequate medical care should be  
22 dismissed because it is subsumed by its claim under the Eighth  
23 Amendment. Defendants' argument is rhetorical and irrelevant to  
24 the main issue of whether plaintiffs actually state a claim for  
25 inadequate medical care. Defendants cite no cases dismissing a  
26 Fourteenth Amendment inadequate medical care claim as being  
27 subsumed by a claim under the Eighth Amendment. The standards of  
28 care under the Fourteenth Amendment are at least as great as  
those under the Eighth Amendment. See *Davis v. County of Nassau*,  
355 F. Supp. 2d 668, 674 (E.D.N.Y. 2005) (citing *City of Revere*  
*v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983)); see also *Jones v.*  
*Johnson*, 781 F.2d 769, 771 (9th Cir. 1986). Because the  
standards are the same, it is unnecessary to determine which  
amendment applies.

1 relate to any effort to thwart Mr. Singh's religious practices.  
2 Plaintiffs argue, once again, that their allegations against all  
3 defendants are sufficient to state a claim for violation of  
4 Mr. Singh's First Amendment right to freedom of religion.

5 Prisoners do not relinquish their First Amendment rights  
6 upon entering prison. *O'Lone v. Estate of Shabazz*, 482 U.S. 342,  
7 348 (1987). "Inmates clearly retain protections afforded by the  
8 First Amendment [citation], including its directive that no law  
9 shall prohibit the free exercise of religion." *Id.* However,  
10 prisons may restrict prisoners' constitutional rights as long as  
11 the restrictions are reasonably related to legitimate penological  
12 interests. *Id.*; *Young v. Lane*, 922 F.2d 370, 374 (7th Cir.  
13 1991).

14 Defendants do not argue that plaintiffs' factual allegations  
15 are insufficient to support a free exercise claim. Instead,  
16 defendants argue plaintiffs fail to allege facts supporting that  
17 the acts or omissions of the individual medical defendants caused  
18 the alleged deprivation of Mr. Singh's First Amendment right to  
19 freedom of religion. Defendants' argument is once again based  
20 upon their attempted distinction between the individual  
21 allegations against particular defendants and the general  
22 allegations against all defendants. Defendants' argument is not  
23 persuasive.

24 Plaintiffs allege generally that all defendants denied  
25 Mr. Singh a vegetarian diet; denied him access to his religious  
26 texts; denied him access to showers before prayers; and abused  
27 him because of his religious beliefs. (AC ¶ 102) Plaintiffs  
28 also allege specifically that Dr. ROSTON was aware of Mr. Singh's



1 vegetarianism and had the authority to recommend a diet change  
2 and did recommend such a change, although his recommendation was  
3 never implemented. (AC ¶ 54) The allegation of denial of a  
4 vegetarian diet extends to the other medical defendants as well.  
5 (AC ¶¶ 101-03) It is not appropriate on a motion to dismiss a  
6 complaint that alleges all defendants acted to infringe First  
7 Amendment rights, to decide which individual defendants actually  
8 restricted Mr. Singh's religious practices in these ways and if  
9 so, whether these restrictions were reasonably related to the  
10 prison's penological interests. Defendants' motions to dismiss  
11 plaintiffs' First Amendment free exercise claim (Second Cause of  
12 Action) are **DENIED**.

13  
14 **E. Third Cause of Action (§ 1983 Claim for Violation of**  
15 **14th Amendment Equal Protection Clause).**

16 Defendants argue plaintiffs fail to state a claim against  
17 the medical defendants (i.e., VIJAYA, BHATT, DEERING, HUANG,  
18 KUBERSKI, UNDERWOOD, GONZALEZ, and ROSTON) for violation of the  
19 Fourteenth Amendment's Equal Protection Clause.

20 "To state a claim under 42 U.S.C. § 1983 for a violation of  
21 the Equal Protection Clause of the Fourteenth Amendment a  
22 plaintiff must [allege] that the defendants acted with an intent  
23 or purpose to discriminate against the plaintiff based upon  
24 membership in a protected class." *Lee v. City of Los Angeles*,  
25 250 F.3d 668, 686 (9th Cir. 2001). Plaintiffs allege that all  
26 defendants violated Mr. Singh's right to equal protection under  
27 the law by intentionally discriminating against him based on his  
28 race and national origin. (AC ¶ 104-105) Plaintiffs

1 specifically allege that the medical defendants failed to provide  
2 Mr. Singh proper medical care, mistreated him, and/or ignored him  
3 because of his race and nationality. (AC ¶ 31) Defendants argue  
4 that plaintiffs' allegations against the medical defendants  
5 pertain to the quality of the medical care rendered by them.  
6 Defendants argue plaintiffs fail to state an equal protection  
7 claim because they fail to allege facts that show defendants  
8 intentionally provided inadequate medical care to Mr. Singh  
9 because of his race and/or nationality.

10 Plaintiffs' Equal Protection claim is averred generally.  
11 This is all that is required by Rules 8(a) and 9(b) of the  
12 Federal Rules of Civil Procedure. Defendants' motions to dismiss  
13 plaintiffs' equal protection claim (Third Cause of Action) are  
14 **DENIED.**

15  
16 **F. Fourth and Fifth Causes of Action (Violation of the**  
17 **Americans with Disabilities Act of 1990 & Violation of**  
**Section 504 of the Rehabilitation Act of 1973).**

18 Defendants argue there is no private right of action against  
19 individual defendants under either the ADA or the Rehabilitation  
20 Act. Defendants argue that these claims should be dismissed  
21 against all defendants to the extent they are sued in their  
22 individual capacities. In their opposition, plaintiffs  
23 mischaracterize defendants' argument, stating that defendants  
24 argue there is no private right of action under the ADA or the  
25 Rehabilitation Act. Plaintiffs cite no authority to oppose  
26 defendants' argument that no ADA or Rehabilitation Act claim can  
27 be brought against individual employees of a public entity.  
28 During oral argument, plaintiffs conceded that there is no such

1 individual liability under the ADA or the Rehabilitation Act.

2 Defendants are correct that actions under the ADA and  
3 Section 504 of the Rehabilitation Act cannot be maintained  
4 against individual actors. *Alsbrook v. Maumelle*, 184 F.3d 999,  
5 1005 n. 8 (8th Cir. 1999) (no individual liability under ADA),  
6 *cert. granted in part sub nom., Alsbrook v. Arkansas*, 528 U.S.  
7 1146, *cert. dismissed*, 529 U.S. 1001; *Walker v. Snyder*, 213 F.3d  
8 344 (9th Cir. 2000) (no individual liability under ADA), *implicit*  
9 *overruling on other grounds recognized by Radaszewski ex. rel.*  
10 *Radaszewski v. Maram*, 383 F.3d 599, 606 (7th Cir. 2004); *Thomas*  
11 *v. Nakatani*, 128 F. Supp. 2d 684, 692 (D. Haw. 2000) (no  
12 individual liability under ADA); *Gary v. Georgia Dept. of Human*  
13 *Res.*, 323 F. Supp. 2d 1368, 1371 (M.D. Ga. 2004) (no individual  
14 liability under ADA); *Frederick L. v. Dep't of Public Welfare*,  
15 157 F. Supp. 2d 509, 531 (citing cases); *Valder v. City of Grand*  
16 *Forks*, 217 F.R.D. 491, 494 (D.N.D. 2003) (no individual liability  
17 under either ADA or Rehabilitation Act); *but see Guckenberger. v.*  
18 *Boston Univ.*, 957 F. Supp. 306, 323 (D. Mass. 1997) (individual  
19 who has authority to accept or reject federal funds can be liable  
20 under Rehabilitation Act) (citing *U.S. Dept. of Transp. v.*  
21 *Paralyzed Veterans of Amer.*, 477 U.S. 597, 605-606 (1986)).

22 Defendants' motions to dismiss plaintiffs' ADA and  
23 Rehabilitation Act claims (Fourth and Fifth Causes of Action)  
24 against all defendants are **GRANTED**.<sup>8</sup>

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25  
26 <sup>8</sup> Neither party raises the issue whether supervisory  
27 officials can be sued in their official capacities for injunctive  
28 relief under the ADA and the Rehabilitation Act. Neither party  
cites *Miranda v. Kitzhaber*, 328 F.3d 1181, 1187-88 (9th Cir.  
2003), a Ninth Circuit case holding that officials can be sued

1           **G.     Sixth Cause of Action (§ 1983 Violation for Failure to**  
2           **Train, Supervise, and Discipline).**

3           Defendants argue that plaintiffs fail to state an official  
4           capacity § 1983 claim against defendants ALAMEIDA, STEINBERG, and  
5           ADAMS.<sup>9</sup> Plaintiffs concede that, to the extent official capacity  
6           claims are alleged against these defendants, they are barred by  
7           the Eleventh Amendment.

8           Defendants also argue that plaintiffs fail to state  
9           individual capacity § 1983 claims against defendants ALAMEIDA,  
10          STEINBERG, ADAMS, PRUD'HOMME, CARILLO, PATTERSON, and ROSTON for  
11          failure to adequately train, supervise, and discipline their  
12          subordinates. Defendants argue that plaintiffs attempt to impose  
13          liability on these officials based solely on their role as  
14          supervisors. Plaintiffs deny that their allegations relate only  
15          to these defendants' official duties, and assert that the  
16          allegations relate to the supervisory defendants' individual  
17          knowledge of Mr. Singh's situation and are therefore sufficient  
18          to state individual capacity claims against them.

19          Liability may be imposed against an official in his  
20          individual capacity under § 1983 for failure to adequately train,  
21          supervise, or discipline. *Larez v. City of Los Angeles*, 946 F.2d  
22          630, 646 (9th Cir. 1991). Individual liability "is imposed

23          \_\_\_\_\_

24          for injunctive relief under the ADA and the Rehabilitation Act in  
25          their official capacities under *Ex parte Young*, 209 U.S. 123  
26          (1908); see also *Radaszewski*, 383 F.3d at 606. Plaintiffs do not  
27          seek injunctive relief in their complaint.

28          <sup>9</sup> ROSTON is not named in the Sixth Claim. Plaintiffs  
            contend this was inadvertent omission. Plaintiffs are granted  
            **LEAVE TO AMEND** to add Dr. ROSTON to the Sixth Claim.

1 against a supervisory official...for his own culpable action or  
2 inaction in the training, supervision, or control of his  
3 subordinates...." *Larez*, 946 F.2d at 646 (internal quotations  
4 and citations omitted); *Watkins v. City of Oakland*, 145 F.3d  
5 1087, 1093 (9th Cir. 1998); *Jones v. Williams*, 297 F.3d 930, 937  
6 (9th Cir. 2002) ("[A] supervisor may be liable if there exists  
7 either (1) his or her personal involvement in the constitutional  
8 deprivation, or (2) a sufficient causal connection between the  
9 supervisor's wrongful conduct and the constitutional  
10 violation.").

11 Plaintiffs' complaint contains general allegations regarding  
12 the responsibilities and duties of the supervisory defendants,  
13 including Dr. ROSTON. (AC ¶¶ 8-12, 14, 17-19) Plaintiffs also  
14 cite the January 2003 Management Review Audit by the Office of  
15 the Inspector General, which detailed systemic failures in the  
16 delivery of medical and mental health care to SATF prisoners.  
17 However, these general allegations are insufficient to state  
18 individual capacity claims against the supervisory defendants as  
19 to the injuries suffered by Mr. Singh. Defendant is correct  
20 that, to state an individual capacity § 1983 claim based on  
21 supervisory liability, a plaintiff must allege facts that support  
22 individual involvement in the alleged deprivations of  
23 constitutional rights, or at least a sufficient causal connection  
24 between the supervisor's conduct and the alleged deprivation.

25 Plaintiffs' complaint does contain several factual  
26 allegations that support individual knowledge and involvement of  
27 some (although not all) of the supervisory defendants in the  
28 alleged deprivations of Mr. Singh's rights. Plaintiffs allege

1 that defendant ADAMS was aware of complaints regarding McKESSON,  
2 who is alleged to have repeatedly brutalized Mr. Singh. (AC  
3 ¶ 84) Plaintiffs also allege that PATTERSON and CARILLO were  
4 supervising five correctional officers who forcibly removed  
5 Mr. Singh from his cell, injuring him. (AC ¶ 48) These factual  
6 allegations are sufficient to state a claim for supervisory  
7 liability against ADAMS, PATTERSON, and CARILLO. *See Harris v.*  
8 *Roderick*, 12 F.3d 1189, 1204 (9th Cir. 1997). Plaintiffs also  
9 indicated during oral argument that they alleged that other  
10 inmates wrote letters to correctional officials trying to bring  
11 to their attention that there was an inmate at SATF (i.e., Mr.  
12 Singh) who was not eating and was dying. However, this  
13 allegation is not sufficient to state a § 1983 claim against a  
14 supervisor, since no supervisor was identified.

15 Beyond these few specific allegations against ADAMS,  
16 PATTERSON, and CARILLO, however, plaintiffs identified no  
17 allegations or paragraphs in their complaint that support the  
18 personal involvement of the supervisory officials in the  
19 deprivation of Mr. Singh's constitutional rights. Defendants'  
20 motion to dismiss plaintiffs' individual capacity claims against  
21 ADAMS, PATTERSON, and CARILLO for supervisory liability is  
22 **DENIED**. Defendants' motions to dismiss plaintiffs' individual  
23 capacity claims against the remaining supervisory officials  
24 (Sixth Cause of Action) is **GRANTED** with **LEAVE TO AMEND**.

25  
26 H. **Seventh Cause of Action (Title VI of the Civil Rights**  
27 **Act of 1964, 52 U.S.C. § 2000d, et seq.)**.

28 Defendants argue that plaintiffs' Title VI claim should be

1 dismissed because such a claim cannot be sustained against  
2 individual defendants. As with the ADA and Rehabilitation Act  
3 claims, plaintiffs again misinterpret defendants' argument,  
4 responding that a private right of action is available under  
5 Title VI. Defendants do not argue that no private right of  
6 action is available.

7 Defendants cite several cases holding that no Title VI  
8 action can be maintained against an individual defendant.  
9 *Jackson v. Katy Indep. Sch. Dist.*, 951 F. Supp. 1293, 1298 (S.D.  
10 Tex. 1996); *Powers v. CSX Transp., Inc.*, 105 F. Supp. 2d 1295,  
11 1311 (S.D. Ala. 2000). Plaintiffs cite no authority to the  
12 contrary, although during oral argument they requested  
13 opportunity to research the issue further. Defendants' motions  
14 to dismiss plaintiffs' Title VI claim (Seventh Cause of Action)  
15 are **GRANTED** with **LEAVE TO AMEND**.

16  
17 I. **Eighth Cause of Action (\$ 1983 Claim for Violation of**  
18 **Fourteenth Amendment Right to Family Relations).**

19 Defendants argue that plaintiffs fail to state a claim for  
20 violation of Fourteenth Amendment rights to family relations  
21 against KUBERSKI, WILSON, CASTILLO, CARILLO, PATTERSON, HUANG,  
22 DEERING, and ROSTON. Defendants argue that these defendants'  
23 actions were too remote in time from the death of Mr. Singh to  
24 have caused it. As discussed above, causation issues are not  
25 properly decided on a motion to dismiss. Defendants' motions to  
26 dismiss plaintiffs' Fourteenth Amendment family relations claim  
27 (Eighth Cause of Action) are **DENIED**.  
28

1           **J.    Ninth Cause of Action (Violation of U.S. Treaties).**

2           All defendants argue there is no private right of action  
3 under these treaties and cite two cases in support, *White v.*  
4 *Paulson*, 997 F. Supp. 1380, 1386 (E.D. Wash. 1998); *Johnson v.*  
5 *Quander*, 370 F. Supp. 2d 79, 1000 (D.D.C. 2005). These cases  
6 stand for the principle a treaty gives rise to a private right of  
7 action either if it is "self-executing," i.e., if it expressly or  
8 impliedly creates a private right of action to enforce the rights  
9 described in the treaty, or if Congress enacts authorizing  
10 legislation. See also *Raffington v. Cangemi*, 399 F.3d 900, (8th  
11 Cir. 2005) ("the [Convention Against Torture] is a non-self-  
12 executing treaty, which means there is no direct right of action  
13 for violation of the treaty, only for violation of any domestic  
14 law implementing the treaty).

15           Plaintiffs do not argue that the treaties at issue here,  
16 i.e., the International Covenant on Civil and Political Rights  
17 and the International Convention on the Elimination of all Forms  
18 of Racial Discrimination, are self-executing. Plaintiffs cite no  
19 authority holding that Congress has passed legislation  
20 authorizing a private right of action under either of these  
21 treaties. Plaintiffs instead argue that the Eighth Amendment  
22 authorizes a private right of action under these treaties.  
23 Plaintiffs cite no authority in support of this contention.  
24 Their argument is not persuasive. Defendants' motion to dismiss  
25 plaintiffs' claims under U.S. treaties (Ninth Cause of Action) is  
26 **GRANTED**. The dismissal of plaintiffs' Ninth Claim does not  
27 resolve plaintiffs' ability to argue that treaties establish  
28 minimum standards of conduct under the Eighth Amendment that are



1 binding on the Department of Corrections.

2  
3 **K. Tenth and Eleventh Causes of Action (Supplemental State**  
4 **Claims).**

5 **1. Statute of Limitations.**

6 Defendants first argue that plaintiffs' supplemental state  
7 law claims (Failure to Summon Medical Care under Cal. Govt. Code  
8 § 845.6; and Elder Abuse under Cal. Welf. & Inst. Code § 15600,  
9 *et seq.*) are barred by the statute of limitations. Tolling under  
10 Cal. Civ. Proc. Code § 352.1 does not operate to toll the  
11 statutory period for prisoners' state claims as it does for  
12 federal claims. In addition, disability (insanity) tolling under  
13 Cal. Civ. Proc. Code § 352 does not apply to the state claims at  
14 issue here. Claims accruing before January 1, 2003, are  
15 therefore subject to a one-year statute of limitations and are  
16 barred, subject to any equitable tolling. For the same reasons  
17 discussed above, however, it is not clear based on the facts  
18 alleged in the complaint that equitable tolling does not apply.  
19 Defendants' motions to dismiss plaintiffs' supplemental state  
20 claims (Tenth and Eleventh Causes of Action) on statute of  
21 limitations grounds is **DENIED WITHOUT PREJUDICE.**

22  
23 **2. Eleventh Claim (Failure to Summon Medical Care,**  
24 **Cal. Govt. Code § 845.6).**

25 Defendants argue that, even if not time-barred, plaintiffs  
26 cannot state a claim for failure to summon medical care against  
27 the medical defendants. Defendants cite a California case in  
28 support of this argument, *Nelson v. State of Cal.*, 139 Cal. App.

3d 72, 79-81 (1982), and assert that this case held that a claim for medical malpractice could not be used to ground a cause of action for failure to summon medical care under § 845.6. *Nelson* distinguished between claims for failure to adequately treat (i.e., medical malpractice) and claims for failure to summon medical care when the prison official knows or should know the prisoner is in immediate need of medical care (i.e., Cal. Govt. Code § 845.6).

Plaintiffs argue in their opposition that their allegations are sufficient. Plaintiffs point to the following allegations: the medical defendants were aware Mr. Singh was dying of malnutrition, but did nothing; and that the medical defendants were aware Mr. Singh was mentally ill and suicidal, but they failed to seek or provide mental health services for him. (AC ¶¶ 65, 96) These allegations, however, do not support that the medical defendants are liable for failure to seek medical care for Mr. Singh's need for *immediate* attention. Additionally, Plaintiffs do not distinguish *Nelson* and cite no authority supporting that their allegations are the types of acts or omissions that are actionable under § 845.6. Defendants' motion to dismiss plaintiffs' claim for failure to summon adequate medical care (Tenth Cause of Action) against the medical defendants is **GRANTED** with **LEAVE TO AMEND**.

Defendants WILLIAMS and HARTFIELD also argue that plaintiffs cannot state a claim for failure to summon medical care against them. These arguments are based on Defendants' distinction between plaintiffs' allegations regarding individual defendants as opposed to plaintiffs' general allegations. For the same

1 reasons discussed above, defendants' motion to dismiss  
2 plaintiffs' \$ 845.6 claim on these grounds is **DENIED**.

3  
4 **VI. CONCLUSION**

5  
6 For all the foregoing reasons, defendants' motions to  
7 dismiss plaintiffs':

- 8  
9 (a) federal claims on statute of limitations and  
10 causation grounds is **DENIED WITHOUT PREJUDICE**;  
11 (b) First Cause of Action (§ 1983 Eighth Amendment  
12 inadequate medical care) is **DENIED**;  
13 (c) Second Cause of Action (§ 1983 First Amendment  
14 freedom of religion) is **DENIED**;  
15 (d) Third Cause of Action (§ 1983 Fourteenth Amendment  
16 equal protection) is **DENIED**;  
17 (e) Fourth Cause of Action (Americans With  
18 Disabilities Act) is **GRANTED**;  
19 (f) Fifth Cause of Action (Section 504 of the  
20 Rehabilitation Act of 1973) is **GRANTED**;  
21 (g) Sixth Cause of Action (*Moneill* Violation) against  
22 ALAMEIDA, STEINBERG, and ADAMS is **GRANTED** on  
23 Eleventh Amendment grounds;  
24 (h) Sixth Cause of Action (§ 1983 Individual  
25 Supervisory Liability) against ADAMS, PATTERSON,  
26 and CARILLO is **DENIED**; Sixth Cause of Action  
27 against the other supervisory defendants is  
28 **GRANTED** with **LEAVE TO AMEND**;

(i) Seventh Cause of Action (Title VI of the Civil Rights Act of 1964) is **GRANTED** with **LEAVE TO AMEND**;

(j) Eighth Cause of Action (§ 1983 Fourteenth Amendment right to family relations) is **DENIED**;

(k) Ninth Cause of Action (U.S. Treaties) is **GRANTED**; and

(l) Tenth Cause of Action (supplemental state claim for failure to summon medical care) against the medical defendants is **GRANTED** with **LEAVE TO AMEND**; and

(m) Tenth and Eleventh Causes of Action (supplemental state claims) on statute of limitations grounds is **DENIED WITHOUT PREJUDICE**.

Any amended complaint shall be filed within 20 days of service of this order.

SO ORDERED.

DATED: October 4, 2005.

/s/ Oliver W. Wanger

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Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE